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DATE: **June 28, 2011**

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Name: **William J. Allen**
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Telecopier No.: **571-273-1443**
Client/Matter No.: ****OO-0145**
Application No. **09/707,273**
Sender's Name: **Jon M. Isaacson/Erika Eidsmoe**
Pages to Follow: **20**

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COVER MESSAGE:

Attached hereto are the following documents:

1. Applicant Initiated Interview Request Form – (1 page)
2. Draft Response to Non-Final Office Action dated: May 4, 2011 (19 pages)

Thank You

--Erika Eidsmoe

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

Applicant Initiated Interview Request Form

Application No.: 09/707,273 First Named Applicant: Charles Eric Hunter
 Examiner: William J. Allen Art Unit: 3625 Status of Application: Pending

Tentative Participants:

(1) William J. Allen (2) Jon M. Isaacson (60,436)
 (3) _____ (4) _____

Proposed Date of Interview: June 30, 2011 Proposed Time: 11am(ET) / 8am(PT) AM/PM

Type of Interview Requested:

(1) ☒ Telephonic (2) ☐ Personal (3) ☐ Video Conference

Exhibit To Be Shown or Demonstrated:

☐ YES ☐ NO

If yes, provide brief description: _____

Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>112/2 rejections</u>	<u>Claims 64, 65, and 67</u>	<u>(none)</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <u>103 rejections</u>	<u>Claims 40, 52, and 64</u>	<u>Wiser & Hamada</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Continuation Sheet Attached

Brief Description of Argument to be Presented:

See attached draft response. Applicants believe that the proposed amendments overcome the rejections under section 112/2 (see pages 11-13 of the draft response) and section 103 (see pages 13-17 of the proposed response).

An interview was conducted on the above-identified application on _____

NOTE: This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

/Jon M. Isaacson/

Applicant/Applicant's Representative Signature

Jon M. Isaacson

Typed/Printed Name of Applicant or Representative

60,436

Registration Number, if applicable

Examiner/SPE Signature

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Charles Eric Hunter, et al.

Confirmation No.: **8435**

Application No.: **09/707,273**

Group Art Unit: **3625**

Filing Date: **November 6, 2000**

Examiner: **William J. Allen**

For: **MUSIC DISTRIBUTION SYSTEMS**

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY PURSUANT TO 37 CFR § 1.111

In response to the Official Action dated **May 4, 2011**, reconsideration is respectfully requested in view of the amendments and/or remarks as indicated below:

- ☐ **Amendments to the Specification** begin on page of this paper.
- ☒ **Amendments to the Claims** are reflected in the listing of the claims which begins on page 2 of this paper.
- ☐ **Amendments to the Drawings** begin on page of this paper and include an attached replacement sheet.
- ☒ **Remarks** begin on page 10 of this paper.
- ☒ The Commissioner is hereby authorized to charge any fee deficiency, charge any additional fees, or credit any overpayment of fees, associated with this application in connection with this filing, or any future filing, submitted to the U.S. Patent and Trademark Office during the pendency of this application, to Deposit Account No. 23-3050.

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This listing of claims will replace all prior versions, and listings, of claims in the application.

Listing of Claims:

1. – 39. (Canceled)

40. (Currently amended) A method comprising:

transmitting an indication to informing a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, wherein the informing comprising placing consumer station is configured to display an indication within a catalog of the music sharing system that the music selection is available for transmission to the intermediate storage medium, and further configured to send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction;

receiving a consumer request for the music selection;

responsive to receiving the consumer request, transmitting the music selection to the intermediate storage medium;

receiving an indication that at least a portion of the music selection has been recorded on the intermediate storage medium and subsequently recorded on a permanent storage medium located at the consumer site; and

responsive to receiving the indication, automatically charging, by a device, the consumer for the music selection.

41. (Previously presented) The method of claim 40 wherein the automatically charging is done electronically.

42. (Canceled)

43. (Previously presented) The method of claim 40, wherein the music sharing system is a peer-to-peer music sharing system, the method further comprising:

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providing a mechanism for the consumer to request said music selection while at a website of said peer-to-peer music sharing system.

44. (Previously Presented) The method of claim 43 further comprising:
paying an operator of said peer-to-peer music sharing system for advertising and making music available for transmission to the intermediate storage medium.

45. – 46. (Canceled)

47. (Previously Presented) The method of claim 43 further comprising:
creating a profile from consumer preference information provided by said peer-to-peer music sharing system.

48. (Previously Presented) The method of claim 40 further comprising:
transmitting to the consumer site, for storage on a storage medium at the consumer site, information identifying music selections available for transmission to the intermediate storage medium.

49. (Previously Presented) The method of claim 48 further comprising:
before automatically charging the consumer for the music selection, receiving an indication that the entire music selection has been recorded on the permanent storage medium.

50. (Previously Presented) The method of claim 49, further comprising:
communicating an order of said music selection to a central controller;
transferring copies of records of said order to a transmission scheduler;
communicating schedules created by said transmission scheduler to a satellite uplink facility for transmission of said order; and
transmitting via satellite said order to said customer site.

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51. (Previously Presented) The method of claim 50, wherein said order communication comprises:

an action selected from the group consisting of: using a home personal computer for ordering said music selection, using a cell phone for ordering said music selection, using a Personal Data Assistant wireless device for ordering said music selection; ordering said music selection is via wireless application protocol.

52. (Currently amended) A computer readable storage medium having computer executable instructions stored thereon, the instructions comprising:

instructions to transmit an indication to inform a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, wherein the instructions to inform comprising instructions to place consumer station is configured to display an indication within a catalog of the music sharing system that the music selection is available for transmission to the intermediate storage medium, and further configured to send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction;

instructions to receive a consumer request for the music selection;

instructions to transmit, responsive to receiving the consumer request, the music selection to the intermediate storage medium;

instructions to receive an indication that at least a portion of the music selection has been recorded on the intermediate storage medium and subsequently recorded on a permanent storage medium located at the consumer site; and

instructions to automatically charge, responsive to receiving said indication, the consumer for the music selection.

53. (Previously Presented) The computer readable medium of claim 52, wherein the instructions to automatically charge comprise instructions to automatically charge electronically.

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54. (Canceled)

55. (Previously presented) The computer readable of claim 52, wherein the music sharing system is a peer-to-peer music sharing system, the instructions further comprising:
instructions to provide a mechanism for the consumer to request said music selection while at a website of said peer-to-peer music sharing system.

56. (Previously Presented) The computer readable of claim 55, the instructions further comprising:
instructions to pay an operator of said peer-to-peer music sharing system for advertising and making music available for transmission to the intermediate storage medium.

57. – 58. (Canceled)

59. (Previously Presented) The computer readable of claim 55, the instructions further comprising:
instructions to create a profile from consumer preference information provided by said peer-to-peer music sharing system.

60. (Previously Presented) The computer readable of claim 52, the instructions further comprising:
instructions to transmit to the consumer site, for storage on a storage medium at the consumer site, information identifying music selections available for transmission to the intermediate storage medium.

61. (Previously Presented) The computer readable of claim 60, the instructions further comprising:

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instructions to, before automatically charging the consumer for the music selection, receive an indication that the entire music selection has been recorded on the permanent storage medium.

62. (Previously Presented) The computer readable of claim 61, the instructions further comprising:

instructions to communicate an order of said music selection to a central controller;
instructions to transfer copies of records of said order to a transmission scheduler;
instructions to communicate schedules created by said transmission scheduler to a satellite uplink facility for transmission of said order; and
instructions to transmit via satellite said order to said customer site.

63. (Previously Presented) The computer readable of claim 62, wherein said order communication comprises an action selected from the group consisting of: using a home personal computer for ordering said music selection, using a cell phone for ordering said music selection, using a Personal Data Assistant wireless device for ordering said music selection; ordering said music selection is via wireless application protocol.

64. (Currently amended) An apparatus comprising:

means for transmitting an indication to informing a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, ~~wherein the means for informing comprising means for placing consumer station is configured to display~~ an indication within a catalog of the music sharing system that the music selection is available for transmission to the intermediate storage medium, and further configured to send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction;
means for receiving a consumer request for the music selection;

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means for transmitting the music selection, responsive to receiving the consumer request, to the intermediate storage medium; and

a central controller system configured to:

receive an indication that at least a portion of the music selection has been recorded on the intermediate storage medium and subsequently recorded on a permanent storage medium located at the consumer site; and

automatically charge the consumer for the music selection in response to receiving the received indication.

65. (Currently amended) The apparatus of claim 64 further wherein the ~~means for automatically charging~~ central controller system is configured to automatically charge the consumer by automatically charging the consumer electronically.

66. (Canceled)

67. (Previously Presented) The apparatus of claim 64 further comprising:
means for transmitting to the consumer site information identifying available music selections for recording on the storage medium.

68. – 70. (Canceled)

71. (Previously Presented) The apparatus of claim 64 further comprising:
means for transmitting, for storage on a storage medium at the consumer site, information identifying music selections available for transmission to the intermediate storage medium.

72. (Canceled)

73. (Currently amended) The apparatus of claim 64, wherein the music sharing system is a peer-to-peer music sharing system, ~~the apparatus further comprising:~~

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~~means for providing a mechanism for the consumer to request said music selection while at a website of said peer-to-peer music sharing system.~~

74. – 75. (Canceled)

76. (Previously Presented) The method of claim 40, further comprising:

transmitting pricing information for the music selection to a customer station located at the customer site; and

periodically transmitting updated pricing information for the music selection to the customer station;

wherein the automatically charging the customer for the music selection is done in accordance with the updated pricing information.

77. (Previously Presented) The computer readable medium of claim 52, further comprising:

instructions to transmit pricing information for the music selection to a customer station located at the customer site; and

instructions to periodically transmit updated pricing information for the music selection to the customer station;

wherein the automatically charging the customer for the music selection is done in accordance with the updated pricing information.

78. (Previously Presented) The apparatus of claim 64, further comprising:

means for transmitting pricing information for the music selection to a customer station located at the customer site; and

means for periodically transmitting updated pricing information for the music selection to the customer station;

wherein the automatically charging the customer for the music selection is done in accordance with the updated pricing information.

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79. (Currently amended) The method of claim 40, wherein the indication within the catalog comprises either a highlight or an icon.

80. (Currently amended) The computer readable medium of claim 52, wherein the indication within the catalog comprises either a highlight or an icon.

81. (Currently amended) The apparatus of claim 64, wherein the indication within the catalog comprises either a highlight or an icon.

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REMARKS

Claims summary

Claims 40, 41, 43, 44, 47-53, 55, 56, 59-65, 67, 71, 73, and 76-81 are pending in the present application. Claims 40, 52, 64, 65, 73, and 79-81 are presently amended. No claims are presently added or canceled.

Office action summary

In the office action of May 4, 2011 (“Office Action”), the examiner issued the following rejections:

- Claims 64, 65, 67, 71, 73, 78, and 81 were rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite.
- Claims 40, 41, 48-53, 60-65, 67, 71, and 79-81 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser, US Patent 7,263,497 (“Wiser”), in view of Hamada, US Patent 6,792,007 (“Hamada”).
- Claims 43, 55, and 73 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser in view of Hamada, and further in view of Williams, “MP3 All in One,” Newsbytes, July 23, 1999 (“Williams”).
- Claims 44 and 56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser, in view of Hamada, in view of Williams, and further in view of Wolff, US Patent 6,247,047 (“Wolff”).
- Claims 47 and 59 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser, in view of Hamada, in view of Williams, and further in view of Allen, US Publication 2003/0036974 (“Allen”).
- Claims 76-78 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser, in view of Hamada, and further in view of Doyle, US Patent 5,694,551 (“Doyle”).

The amendments and rejections are discussed below. The examiner is respectfully urged to reconsider the application and withdraw the rejections. Should the examiner have any

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questions or concerns that might be efficiently resolved by way of a telephonic interview, the examiner is invited to call applicants' undersigned attorney, Jon M. Isaacson, at 206-332-1102.

Rejections under 35 U.S.C. § 112

Claim 64 stands rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. More specifically, the examiner asserted that:

Regarding claim 64, Claim 64 recites the elements "means for informing" and "means for placing and indication" that represent means (or step) plus function limitations invoking 35 U.S.C. 112, sixth paragraph. However, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function. More specifically, Applicant does not clearly describe what structure or acts are material to the "informing" or placement of the indication. Moreover, assuming said limitations are drawn to program code/software, then the Examiner hereby asserts that Applicant has failed to set forth any algorithm, coding, or the like necessary to perform the necessary functionality.

Office Action, page 7. Without conceding the propriety of the rejection, in an effort to clarify the subject matter recited by claim 64, applicants presently amend claim 64. As amended claim 64 recites an apparatus which comprises "means for transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system." Claim 64 also recites that "the consumer station is configured to display an indication within a catalog of the music sharing system that the music selection is available for transmission to the intermediate storage medium, and further configured to send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction."

Applicants respectfully submit that the specification provides structure corresponding to "means for transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system," as recited by claim 64. As one example of structure, the specification describes that "[t]he

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satellite link (or alternatively the central controller system 36) periodically communicates with each customer household to provide information on available music and program/pricing information.” Specification, page 15 lines 17-20; *see also* Figs. 1, 3, and 4. Applicants submit that this is not the only form of structure provided in the specification; applicants cite to this example here as merely one example of structure provided in the specification. Thus, “means for transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system,” as recited by claim 64, should not be construed to cover only the one example of structure explicitly noted in these remarks, but should be “construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof,” as required by 35 U.S.C. § 112, ¶ 6.

For at least the foregoing reasons, applicants submit that the specification describes structure which corresponds to the “means for transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium,” as recited by claim 64. Accordingly, applicants request reconsideration and withdrawal of the rejection of claim 64 under 35 U.S.C. § 112, ¶ 2.

Claims 65 and 73 stand rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. More specifically, the examiner asserted that:

With respect to claim 65 and 73, similar to independent claim 64, these claims recite means for elements that are not adequately described in Applicant's specification so as to clearly link or associate what is considered the “means for”. As with claim 64, and assuming said limitations are drawn to program code/software, the Examiner again asserts that Applicant has failed to set forth any algorithm, coding, or the like necessary to perform the necessary functionality.

Office Action, page 7. Without conceding the propriety of the rejection, in an effort to clarify the subject matter recited by claims 65 and 73, applicants presently amend claims 65 and 73. Claim 65, as presently amended, recites, in full: “The apparatus of claim 64 further wherein the central controller system is configured to automatically charge the consumer by automatically charging the consumer electronically.” TClaim 73, as presently amended, recites, in full: “The apparatus of claim 64, wherein the music sharing system is a peer-to-peer music sharing system.”

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Thus, claims 65 and 73 no longer contain “means for” recitations. Because claims 65 and 73 do not contain “means for” recitations, applicants submit that the examiner’s concerns with respect to claims 65 and 73 are now moot. Accordingly, applicants request reconsideration and withdrawal of the rejection of claims 65 and 73 under 35 U.S.C. § 112, ¶ 2.

Claims 67, 71, 78, and 81 stand rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite. The rejections of claims 67, 71, 78, and 81 were based solely on the dependence of claims 67, 71, 78, and 81 from claim 64. Inasmuch as claim 64 is not indefinite, as discussed above, applicants submit that claims 67, 71, 78, and 81 are also not indefinite. Accordingly, applicants request reconsideration and withdrawal of the rejection of claims 67, 71, 78, and 81 under 35 U.S.C. § 112, ¶ 2.

Rejections under 35 U.S.C. § 103(a)

Claim 40 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser in view of Hamada. Without conceding the propriety of the rejection of claim 40, in an effort to advance prosecution of the present application, applicants presently amend claim 40. As amended, claim 40 is directed to a method which comprises “transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system.” Claim 40 also recites that “the consumer station is configured to display an indication within a catalog of the music sharing system that the music selection is available for transmission to the intermediate storage medium, and further configured to send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction.” Applicants respectfully submit that, for the reasons which follow, the cited references fail to teach or suggest these recitations of claim 40.

In the Office Action, regarding claim 40, the examiner asserts that:

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Regarding claim 40, Wiser teaches a method comprising:

informing a customer that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, the informing comprising placing an indication within a catalog of the music sharing system that the music selection is available for transmission to the intermediate storage medium [see at least: col. 13 lines 52-63, col. 19 lines 15-21, Fig. 8, Fig. 9AA #902];

Office Action, page 9. With respect to Wiser, the examiner further asserts that:

Wiser provides an indication as part of a preview process which enables the user to decide whether to purchase the entirety of the song for permanent storage on a hard disk (intermediate storage) of client system and subsequent recording to a CD-R or other portable medium [see at least: col. 13 lines 52-63, Fig. 8]. As part of the preview page, the user is indicated that songs are available for purchase (i.e. permanent storage in hard disk), with the indication including a button (analogous to an icon) which causes the purchase to be effected [see at least: col. 19 lines 15-21, Fig. 9AA #902].

Office Action, page 6. In those portions cited by the examiner, Wiser describes:

Preview: this process is supported by delivery servers 118 and media player 116 to provide a real time streaming of audio data and display of related media data at media player 116. The preview enables the user to decide whether to purchase the entirety of the song for permanent storage on a hard disk of client system 126 and subsequent recording to a CD-R or other portable medium.

...

First, the user views in Web browser 128 some form of menu, catalogue, index or other listing of music and media available for purchase which can be similar in form to the preview listing of FIG. 8. From the user's Web browser 128 (FIG. 1), a purchase request for a specific song is sent to HTTP server 122, for example by the user clicking on a "Buy It" button, in step 902 (FIG. 9A).

Wiser, col. 13 lines 57-63 and col. 19 lines 15-21 (emphases added). As emphasized, Wiser describes a preview which provides “real time streaming of audio data and display of related media data at media player 116” and Wiser describes a “listing of music and media available for purchase.” *Id.* While Wiser may describe that a user may select media data for a streaming preview or for purchase, applicants submit that Wiser does not teach or suggest a user station which sends a request for media data to be transmitted to an intermediate storage medium in response to a consumer selection of the media data without requiring further interaction from the

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consumer. Thus, applicants submit that Wiser fails to teach or suggest “transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, wherein the consumer station is configured to...send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction,” as recited by claim 40.

Regarding Hamada, the examiner asserts that:

In the same field of endeavor, Hamada teaches a system and method for distribution of media content. More importantly, Hamada teaches where the charging is in response to an indication that at least a portion of the media has been stored in a permanent storage medium at the consumer site [see at least: col. 6 lines 36-52, col. 7 lines 55-67, Fig. 14 #s206-208].

Office Action, page 10. Without conceding the propriety of the examiner’s assertion with respect to Hamada, applicants submit that the assertions with respect to Hamada fail to cure the deficiencies of Wiser to teach or suggest “transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, wherein the consumer station is configured to...send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction,” as recited by claim 40. Thus, applicants submit that Wiser and Hamada, individually and collectively, fail to teach or suggest all of the recitations of claim 40.

For at least the foregoing reasons, applicants submit that claim 40 is patentably defined over Wiser in view of Hamada. Accordingly, applicants request reconsideration and withdrawal of the rejection of claim 40 under 35 U.S.C. § 103(a).

Claim 52 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser in view of Hamada. Without conceding the propriety of the rejection of claim 52, in an effort to advance prosecution of the present application, applicants presently amend claim 52. As amended, claim 52 is directed to “[a] computer readable storage medium having computer executable instructions stored thereon” where the instructions comprise “instructions to transmit an indication to a consumer station that a music selection is available for transmission to an

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intermediate storage medium at a consumer site via a music sharing system, wherein the consumer station is configured to...send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction.” For at least the reasons that Wiser and Hamada fail to teach or suggest “transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, wherein the consumer station is configured to...send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction,” as recited by claim 40, applicants submit that Wiser and Hamada fail to teach or suggest “instructions to transmit an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, wherein the consumer station is configured to...send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction,” as recited by claim 52. Accordingly, applicants request reconsideration and withdrawal of the rejection of claim 52 under 35 U.S.C. § 103(a).

Claim 64 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser in view of Hamada. Without conceding the propriety of the rejection of claim 64, in an effort to advance prosecution of the present application, applicants presently amend claim 64. As amended, claim 64 is directed to an apparatus which comprises “means for transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, wherein the consumer station is configured to...send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction.” For at least the reasons that Wiser and Hamada fail to teach or suggest “transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, wherein the consumer station is configured to...send a

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consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction,” as recited by claim 40, applicants submit that Wiser and Hamada fail to teach or suggest “means for transmitting an indication to a consumer station that a music selection is available for transmission to an intermediate storage medium at a consumer site via a music sharing system, wherein the consumer station is configured to...send a consumer request for the music selection to be transmitted to the intermediate storage medium in response to a consumer selection of the indicated music selection without requiring further consumer interaction,” as recited by claim 64. Accordingly, applicants request reconsideration and withdrawal of the rejection of claim 64 under 35 U.S.C. § 103(a).

Claims 41, 48-51, 53, 60-63, 65, 67, 71, and 79-81 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser in view of Hamada. Claims 41, 48-51, 53, 60-63, 65, 67, 71, and 79-81 depend, directly or indirectly from claims 40, 52, and 64. Inasmuch as claims 41, 48-51, 53, 60-63, 65, 67, 71, and 79-81 depend from claims that are patentably defined over Wiser in view of Hamada, applicants submit that claims 41, 48-51, 53, 60-63, 65, 67, 71, and 79-81 are also patentably defined over Wiser in view of Hamada. Accordingly, applicants request reconsideration and withdrawal of the rejections of claims 41, 48-51, 53, 60-63, 65, 67, 71, and 79-81 under 35 U.S.C. § 103(a).

Claims 43, 44, 47, 55, 56, 59, 73, 76-78 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiser in view of Hamada, and further in view of one of Williams, Wolff, Allen, and Doyle. Regarding Williams, the examiner asserts that:

In the same field of endeavor, 892u teaches the advent of Napster.com – a website/software supporting a virtual community and search engine that makes it a good way to find MP3 files and associated resources. In this regard, 892u teaches where the music sharing system is a peer to peer sharing system.

Office Action, page 13. Regarding Wolff, the examiner asserts that:

In the field of electronic commerce, Wolff teaches the payment of a fee to a sponsor server (operator) by a merchant for advertising (see at least: col. 7 lines 21-25).

Office Action, page 14. Regarding Allen, the examiner asserts that:

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In the same field of endeavor, Allen teaches a content distribution system including creating a profile from customer preference information [see at least: 0013, (0078-0080)].

Office Action, page 15. Regarding Doyle, the examiner asserts that:

In the same field of endeavor, Doyle teaches periodically transmitting updated pricing information for the music selection to the customer station;
wherein the automatically charging the customer for the music selection is done in accordance with the updated pricing information [see at least: col. 4 lines 28-35, col. 5 lines 61-65 (product item update), col. 7 lines 19-24, col. 8 lines 61-67, col. 9 lines 13-21]. Note: the price paid by the customer is the updated price, thus, the customer is charged in accordance with the updated price.

Office Action, page 16. Without conceding the propriety of any of the examiner's assertions with respect to Williams, Wolff, Allen, and Doyle, applicants submit that Williams, Wolff, Allen, and Doyle fail to cure the deficiencies of Wiser and Hamada to teach or suggest all of the recitations of claims 40, 52, and 64. Thus, applicants submit that claims 40, 52, and 64 are patentably defined over Wiser, Hamada, Williams, Wolff, Allen, and Doyle. Claims 43, 44, 47, 55, 56, 59, 73, 76-78 depend from claims 40, 52, and 64. Inasmuch as claims 43, 44, 47, 55, 56, 59, 73, 76-78 depend from claims which are patentably defined over Wiser, Hamada, Williams, Wolff, Allen, and Doyle, applicants submit that claims 43, 44, 47, 55, 56, 59, 73, 76-78 are also patentably defined over Wiser, Hamada, Williams, Wolff, Allen, and Doyle. Accordingly, applicants request reconsideration and withdrawal of the rejections of claims 43, 44, 47, 55, 56, 59, 73, 76-78 under 35 U.S.C. § 103(a).

Conclusion

Applicants believe that the present remarks are responsive to each of the points raised by the examiner in the Office Action, and submit that claims 40, 41, 43, 44, 47-53, 55, 56, 59-65, 67, 71, 73, and 76-81 of the application are in condition for allowance. Favorable consideration and passage to issue of the application at the examiner's earliest convenience is earnestly solicited.

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